

K.S.A. 44-505(a) exempts from application of the Kansas Workers Compensation Act the following:

(2) any employment . . . wherein the employer had a total gross annual payroll for the preceding calendar year of not more than \$20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than \$20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as part of the total gross annual payroll of such employer for purposes of this subsection

The record in this case contains no evidence that respondent, a roofing business, had an annual payroll of more than \$20,000 for the preceding calendar year. In fact, the evidence does not establish that respondent had a payroll of greater than \$20,000 for the current year. Rather, claimant contends that the respondent should have reasonably estimated that their payroll would have been greater than \$20,000 for the current year had respondent continued in business. According to claimant, respondent left the business solely to avoid liability of the workers compensation claim.

The Appeals Board finds the evidence does not convincingly establish that the respondent left the business for purposes of avoiding this claim. In fact, it appears respondent started working for H & H Roofing during the week claimant was injured and had called a representative of H & H Roofing several times before the injury indicating he planned to come back to H & H Roofing. The Appeals Board, therefore, does not find from the record that respondent's payroll should reasonably have been estimated to exceed \$20,000 for the current year.

WHEREFORE, the Appeals Board finds that the order by Administrative Law Judge Robert H. Foerschler, dated November 4, 1997, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: Steven D. Treaster, Overland Park, KS
J. Paul Maurin, III, Kansas City, KS
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director